

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 87 be amended to read as follows:

- 1 Page 7, between lines 15 and 16, begin a new paragraph and insert
- 2 the following:
- 3 "SECTION 14. IC 15-4-10-2.5 IS ADDED TO THE INDIANA
- 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2006]: Sec. 2.5. As used in this chapter,
- 6 "consumer information" means information that will assist
- 7 consumers and other persons in making evaluations and decisions
- 8 regarding the:
- 9 (1) purchase;
- 10 (2) preparation; and
- 11 (3) use;
- 12 of corn or corn products.
- 13 SECTION 15. IC 15-4-10-6 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) As used in this
- 15 chapter, "first purchaser" means a person who is engaged in Indiana in
- 16 the business of buying grain from producers. The term refers to a
- 17 person buying or otherwise acquiring corn from the:
- 18 (1) producer of the corn; or
- 19 (2) Commodity Credit Corporation if the corn is pledged as
- 20 collateral for a loan issued under a price support loan
- 21 program administered by the Commodity Credit
- 22 Corporation.
- 23 (b) The term does not include a buyer of grain who buys less than
- 24 fifty thousand (50,000) bushels of grain annually for the buyer's own
- 25 use as seed or feed.

SECTION 16. IC 15-4-10-6.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 6.7. As used in this chapter, "industry information" means:**

(1) **information and programs that lead to the development of new markets, new marketing strategies, or increased efficiency; and**

(2) **activities to enhance the image of; the corn industry.**

SECTION 17. IC 15-4-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 8. As used in this chapter, "marketing year" means the twelve (12) month period beginning ~~September~~ **October** 1 and ending the following ~~August 31~~ **September 30**.**

SECTION 18. IC 15-4-10-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 8.5. As used in this chapter, "new market price" means the sale price received by a producer for corn after adjustments for any premium or discount based on grading or quality factors.**

SECTION 19. IC 15-4-10-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10.5. (a) As used in this chapter, "promotion" means any action, including:**

(1) **paid advertising;**

(2) **technical assistance; and**

(3) **trade servicing activities;**

**to enhance the image or desirability of corn or corn products in domestic and foreign markets.**

**(b) "Promotion" also means any activity designed to communicate to:**

(1) **consumers;**

(2) **importers;**

(3) **processors;**

(4) **wholesalers;**

(5) **retailers; and**

(6) **government officials;**

**other information relating to the positive attributes or the benefits of importation, use, or distribution of corn and corn products.**

SECTION 20. IC 15-4-10-10.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10.7. As used in this chapter, "research" means any type of study to advance the:**

(1) **image;**

(2) **desirability;**

(3) **marketability;**

1           **(4) production;**  
 2           **(5) product development;**  
 3           **(6) quality; and**  
 4           **(7) functional or nutritional value;**  
 5           **of corn or corn products, including any research activity designed**  
 6           **to identify and analyze barriers to export sales of corn and corn**  
 7           **products.**

8           SECTION 21. IC 15-4-10-12 IS AMENDED TO READ AS  
 9           FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. (a) The Indiana  
 10          corn marketing council is established. The council is a public body  
 11          corporate and politic, and though it is separate from the state, the  
 12          exercise by the council of its powers constitutes an essential  
 13          governmental function. The council may sue and be sued and plead and  
 14          be impleaded.

15          (b) The council shall be composed of fifteen (15) members. The  
 16          elected members from districts listed under section 16(a) of this chapter  
 17          must be:

- 18           (1) registered as voters in Indiana;
- 19           (2) at least eighteen (18) years of age; and
- 20           (3) producers.

21          (c) Each elected member of the council must reside in the district  
 22          identified in section 16(a) of this chapter from which the member was  
 23          elected.

24          (d) Each member of the council is entitled to reimbursement for  
 25          traveling expenses and other expenses actually incurred in connection  
 26          with the member's duties. ~~as provided in the state travel policies and~~  
 27          ~~procedures established by the department of administration and~~  
 28          ~~approved by the state budget agency. However, council~~ **Council**  
 29          members are not entitled to any salary or per diem.

30          SECTION 22. IC 15-4-10-14 IS AMENDED TO READ AS  
 31          FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) If an elected  
 32          member of the council ceases to meet one (1) or more of the  
 33          qualifications set forth in section 12(b) of this chapter, the member's  
 34          term of office terminates and the member's office becomes vacant.

35          (b) When an elected council member's office becomes vacant before  
 36          the expiration of the member's term of office, the council shall fill the  
 37          vacancy by appointing a replacement member who meets the  
 38          qualifications set forth in section 12(b) of this chapter. The appointee  
 39          shall serve for the remainder of the unexpired term.

40          ~~(c) When the office of a council member appointed under section~~  
 41          ~~16(c) of this chapter to represent first purchaser organizations becomes~~  
 42          ~~vacant before the expiration of the member's term of office, the director~~  
 43          ~~shall fill the vacancy by appointing a replacement member who~~  
 44          ~~represents a first purchaser organization. The appointee shall serve for~~  
 45          ~~the remainder of the unexpired term.~~

46          ~~(d)~~ **(c)** When an appointed council member's office representing the  
 47          senate becomes vacant before the expiration of the member's term of

office, the president pro tempore of the senate shall fill the vacancy by appointing a replacement member who represents the senate and is a member of the same political party as the appointed council member who vacated the office. When an appointed council member's office representing the house of representatives becomes vacant before the expiration of the member's term of office, the speaker of the house of representatives shall fill the vacancy by appointing a replacement member who represents the house of representatives and is a member of the same political party as the appointed council member who vacated the office. An appointee under this subsection shall serve for the remainder of the unexpired term.

SECTION 23. IC 15-4-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) One (1) council member shall be elected from each of the following districts:

DISTRICT 1. The counties of Lake, Newton, Jasper, Benton, Porter, LaPorte, Starke, White, and Pulaski.

DISTRICT 2. The counties of St. Joseph, Elkhart, Marshall, Kosciusko, Fulton, Carroll, Cass, Miami, and Wabash.

DISTRICT 3. The counties of LaGrange, Steuben, Noble, Dekalb, Whitley, Allen, Huntington, Wells, and Adams.

DISTRICT 4. The counties of Montgomery, Fountain, Warren, Tippecanoe, Vermillion, Parke, Putnam, Vigo, Clay, and Owen.

DISTRICT 5. The counties of Clinton, Boone, Tipton, Howard, Grant, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Rush, Bartholomew, and Decatur.

DISTRICT 6. The counties of Blackford, Jay, Delaware, Henry, Randolph, Wayne, Fayette, and Union.

DISTRICT 7. The counties of Sullivan, Greene, Knox, Daviess, Martin, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, and Spencer.

DISTRICT 8. The counties of Monroe, Brown, Lawrence, Jackson, Orange, Washington, Perry, Crawford, Harrison, and Floyd.

DISTRICT 9. The counties of Franklin, Jennings, Jefferson, Ripley, Dearborn, Ohio, Clark, Switzerland, and Scott.

~~DISTRICT 10. All counties in Indiana.~~

~~(b) The dean of the school of agriculture at Purdue University or the dean's designee shall serve as an ex officio member of the council.~~

~~(c) The director shall appoint two (2) representatives of first purchaser organizations to serve as members of the council.~~

**(b) Six (6) council members shall be elected to represent all counties in the state.**

~~(c)~~ (c) The president pro tempore of the senate shall appoint one (1) member of the senate to serve as a member of the council. The speaker of the house of representatives shall appoint one (1) member of the house of representatives to serve as a member of the council. The members appointed under this subsection are ex officio members of the

council. These appointed members shall at all times be members of different political parties. Notwithstanding any other law, the members appointed under this section are entitled to receive the per diem of members of the general assembly for time spent in attendance at the meetings of the council. Per diem of these members shall be paid by the council. ~~upon approval of the director.~~

SECTION 24. IC 15-4-10-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. An election of a council member shall be held in a district in the year in which the term of the district's council member is to expire. ~~Between April~~ **January 1** and ~~April~~ **March 15** of that year, the council shall notify the producers of the district of the impending election by publishing one (1) notice in a statewide agricultural publication and by making information available to the news media in the district.

SECTION 25. IC 15-4-10-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. (a) The ballot for the election of a district council member must bear the name of each producer who:

- (1) meets the qualifications set forth in section 12(b) of this chapter; and
- (2) files with the ~~director,~~ **council**, before June 16 of the year of the election, a petition in support of candidacy signed by ten (10) other producers who reside in the district.

(b) The ~~director~~ **council** shall provide petition forms upon request and shall make forms available at cooperative extension service offices ~~located in the district~~ **through electronic means or through any other means specified by the council.** The ~~director shall determine the position of names on the ballot by drawing lots and shall provide the producers who have qualified to have their names on the ballot with advance notice of the time and place of the drawing:~~ **must reflect the order in which petitions are received by the council.**

(c) No names other than the names of the producers who have qualified under this subsection may be printed on the ballot by the director. A name may not be written in on the ballot by a producer.

SECTION 26. IC 15-4-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 19. (a) For the purposes of the election of a district council member, the ~~director~~ **council** shall provide an absentee ballot to every producer who:

- (1) resides outside Indiana or expects to be absent from the district in which the producer resides on the day of the election;
- (2) requests an absentee ballot from the ~~director~~ **council** no more than thirty (30) days before the election; and
- (3) files with the ~~director~~ **council** a notarized affidavit swearing or affirming that the producer is eligible to vote in the election.

(b) A producer's absentee ballot is not valid unless the director receives the ballot and the affidavit from the producer at least two (2) working days before the election.

SECTION 27. IC 15-4-10-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. The election of a district council member shall be conducted by the council in August:

- (1) at voting places located within the district; **or**
- (2) by any other reasonable manner as determined by the council.**

The winner of an election takes office on the following ~~September~~ **October 1.**

SECTION 28. IC 15-4-10-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. ~~(a)~~ The council shall do the following:

- (1) Elect a ~~chairman, vice chairman, president, vice president,~~ secretary, treasurer, and other officers the council considers necessary.
- (2) Employ personnel and contract for services that are necessary for the proper implementation of this chapter.
- (3) Bond the treasurer and such other persons as necessary to ensure adequate protection of funds received and administered by the council.
- (4) Authorize the expenditure of funds and the contracting of expenditures to conduct proper activities under this chapter.
- (5) Annually establish priorities and prepare and approve a budget consistent with the estimated resources of the council and the scope of this chapter.
- (6) Annually publish an activities and financial report and present this report to the director.
- (7) Procure and evaluate data and information necessary for the proper implementation of this chapter.
- (8) Formulate and execute assessment procedures and methods of collection.
- (9) Receive and investigate, or cause to be investigated, complaints and violations of this chapter and take necessary action within its authority.
- (10) Adopt bylaws and operating procedures governing operations of the board.**
- ~~(+0)~~ **(11)** Take any other action necessary for the proper implementation of this chapter.

~~(b) Seven (7) affirmative votes are required for the council to take action.~~

SECTION 29. IC 15-4-10-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. The council shall meet at least ~~once in each of the following periods:~~

- ~~(1) January, February, and March;~~
- ~~(2) April, May, and June;~~
- ~~(3) July, August, and September;~~
- ~~(4) October, November, and December;~~

**three (3) times in each marketing year at the call of the president.**

SECTION 30. IC 15-4-10-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money it receives under this chapter, including ~~assessments, gifts, and grants, any gifts or grants that are given for the express purpose of implementing this chapter in any~~ **the same** way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for the purpose of market development, **promotion, research, industry information, and consumer information.**

(d) The council may not use money received, collected, or accrued under this chapter for any purpose other than the implementation of this chapter.

SECTION 31. IC 15-4-10-24.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 24.5. (a) The Indiana corn market development account is established within the state general fund for the purpose of ~~market development; implementing this chapter.~~ The account shall be administered by the council. The account consists of:

- (1) assessments the council receives under this chapter;
- (2) gifts; and
- (3) grants.

(b) The expenses of administering this chapter shall be paid from money in the account. ~~If the balance of the account is not more than five hundred thousand dollars (\$500,000) in a fiscal year, the council may expend not more than twenty-five percent (25%) of the balance for administrative expenses. If the account has a balance of more than five hundred thousand dollars (\$500,000) in a fiscal year, the council may spend an additional amount of not more than ten percent (10%) of the balance over five hundred thousand dollars (\$500,000) for administrative expenses.~~

(c) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(d) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the account is continually appropriated to the council for purposes of this chapter.

SECTION 32. IC 15-4-10-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25. (a) Obligations incurred by the council and other liabilities and claims against the council may be enforced only against the assets of the council in the same manner as if it were a corporation. No liabilities for the debts or actions of the council may arise against:

- (1) the state;
- (2) any political subdivision (as defined in IC 34-6-2-110); or
- (3) any member, officer, employee, or agent of the council in an individual capacity.

(b) The members and employees of the council may not be held responsible individually in any way to any person for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, or employee, except for their own individual acts that result in the violation of any law.

(c) No employee **or contractor** of the council may be held responsible individually for ~~the any~~ act or omission of ~~any the council~~ **or a member** of the council.

(d) Any liability of the members of the council is several and not joint. A member of the council may not be held liable for the default of any other member.

SECTION 33. IC 15-4-10-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 26. (a) An assessment of one-half ~~cent of one percent (\$0.005)~~ **(0.005) of the net market price** per bushel is ~~permitted shall be collected~~ on all corn sold in Indiana. The assessment may be imposed and collected on a quantity of corn only once, and shall be collected by the first purchaser. ~~if the producer exercises the option under subsection (b) to be included in the assessment. An assessment shall not be conducted on the producer without the producer's written consent.~~ The rate of the assessment imposed by this section may be increased **changed** only by the general assembly.

(b) ~~In conjunction with the producer's first settlement with the first purchaser following June 30, 2001, the first purchaser shall make available to the producer the forms granting the producer the option to be included in the assessment and inform the producer of the option to be included. If the producer desires to be included in the assessment, the producer shall complete and sign a form, in writing, indicating the producer's desire to be included in the assessment permitted by subsection (a). It is a producer's obligation to return enrollment forms to a first purchaser. The first purchaser shall keep a record of each producer's desire to be included in the assessment, as indicated on the completed forms. Forms completed by a producer shall remain in effect until repealed in writing by the producer and delivered to the first purchaser. The initial enrollment by producers who want to participate in the corn marketing program must occur from July 1, 2001, through August 31, 2001. Corn market development assessments collected by a first purchaser begin on September 15, 2001. A change in participation by a producer to be included in the assessment or to discontinue the assessment does not take effect until July 1 following the producer's election to change. The department of agriculture shall prescribe the forms to be used under this subsection and distribute the forms to the first purchaser prior to July 1, 2001. The council shall~~



reimburse the department of agriculture for the costs of preparation and distribution of the forms required by this subsection from the funds the council receives under this chapter. Auditing fees collected from this program and all other programs by the Indiana grain buyers and warehouse licensing agency revert to the office of agriculture account to cover administrative costs.

(c) If the producer indicates the desire to be included in the assessment permitted under subsection (a) by following the procedure described in subsection (b); (b) The first purchaser of a quantity of corn shall deduct the assessment on the corn from the sum of money to be paid to the producer based on the sale of the corn. A first purchaser shall accumulate assessments collected under this subsection throughout each of the following periods:

- (1) January, February, and March.
- (2) April, May, and June.
- (3) July, August, and September.
- (4) October, November, and December.

(d) (c) At the end of each period, the first purchaser shall remit to the council all assessments collected during the period. A first purchaser who remits all assessments collected during a period within ~~fifteen (15)~~ **thirty (30)** days after the end of the period is entitled to retain three percent (3%) of the total of the assessments as a handling fee.

SECTION 34. IC 15-4-10-26.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 26.5. (a) A producer who has sold corn and had the state assessment deducted from the sale price may secure a refund equal to the amount deducted upon filing a written application.**

**(b) The application must be made to the council within one hundred eighty (180) days after the deduction.**

**(c) Application forms shall be given by the council to a first purchaser upon request. The first purchaser shall make the applications available to a producer who requests an application.**

**(d) Proof that an assessment has been deducted shall be attached to each application for refund by a producer. The proof of assessment deducted may be in the form of a duplicate or certified copy of the purchase invoice or settlement sheet from the first purchaser.**

**(e) The council shall remit the refund to the producer not later than thirty (30) days after the date an application is received.**

SECTION 35. IC 15-4-10-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 27. (a) A first purchaser shall keep detailed records of all assessments collected and remitted under this chapter for at least five (5) years.**

**(b) Upon request, a first purchaser shall supply the council with any information from records kept under subsection (a).**

SECTION 36. IC 15-4-10-30 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 30. (a) If a first purchaser fails to remit the assessments collected during a period defined in section 26 of this chapter within ~~forty-five (45)~~ **thirty (30)** days after the end of the period, the council shall contact the first purchaser and allow the first purchaser to present comments to the council concerning:

- (1) the status and amount of the assessments due; and
- (2) any reasons why the council should not bring legal action against the first purchaser.

(b) After allowing a first purchaser the opportunity to present comments, the council:

- (1) ~~shall~~ **may** adjust the amount of the assessments due, if the first purchaser's comments reveal that the council's figure is inaccurate; ~~and~~
- (2) may assess a penalty against the first purchaser; ~~of no more than ten percent (10%) of the amount of any assessments not remitted within forty-five (45) days after the end of the period.~~

**(3) shall:**

- (A) assess a fee for an unpaid assessment due the council from a person responsible for remitting assessments by two percent (2%) each month beginning with the day following the date the assessment was due under this subsection; and**
- (B) if there is any remaining amount due after the assessment under clause (A), assess a fee at the same rate on the corresponding day of each month thereafter until paid;**

**(4) shall compute the amounts payable under this section monthly on unpaid assessments and shall include any unpaid late charges previously applied under this section; and**

**(5) shall determine the date paid by the postmark applied to the remitting envelope.**

(c) If a first purchaser fails to remit assessments after being allowed to present comments under subsection (a) or to pay any penalty assessed under subsection (b), the council may bring a civil action against the first purchaser in the circuit, superior, or municipal court of any county. The action shall be tried and a judgment rendered as in any other proceeding for the collection of a debt. In an action under this subsection, the council may obtain:

- (1) a judgment in the amount of all unremitted assessments and any unpaid penalty; and
- (2) an award of the costs of bringing the action.

SECTION 37. IC 15-4-10-32 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 32. (a) The checkoff assessment collected by the council may not be used to influence legislation or governmental action or policy.**

**(b) The assessment may be used to communicate information**

1 relating to the:

2 (1) conduct of;

3 (2) implementation of; or

4 (3) results of;

5 promotion, research, consumer information, or industry  
6 information activities to appropriate government officials.

7 (c) The assessment may be used for action designed to market  
8 corn or corn products directly to a foreign government or a  
9 political subdivision of a foreign government."

10 Page 7, between lines 38 and 39, begin a new paragraph and insert  
11 the following:

12 SECTION 40. [EFFECTIVE JULY 1, 2006] (a) Notwithstanding  
13 IC 15-4-10-24, as amended by this act, for the period beginning  
14 July 1, 2007, and ending June 30, 2010, thirty percent (30%) of the  
15 money collected by the Indiana corn marketing council under  
16 IC 15-4-10-26, as amended by this act, shall be used for incentives  
17 for the development of new ethanol plants that have a majority  
18 ownership in Indiana. The corn marketing council shall distribute  
19 the funds utilizing criteria established by the Indiana Economic  
20 Development Corporation.

21 (b) This SECTION expires December 31, 2010."

22 Renumber all SECTIONS consecutively.

(Reference is to ESB 87 as printed February 17, 2006.)

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Representative Gutwein